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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LAWRENCE R. ANDERSON
CONSTRUCTION, INC.,

Plaintiff and Respondent,

v.

HOWARD CALIFORNIA PROPERTIES
CAMARILLO 5, LLC,

Defendant and Appellant.

2d Civil No. B235033
(Super. Ct. No. 56-2010-
00372716-CU-CL-VTA)
(Ventura County)

In this action to foreclose a mechanic's lien, the trial court chose a formula based on a percentage of the contract completed in finding the reasonable value of the labor, services, equipment and materials furnished to the job. We conclude the trial court acted properly. The trial court did err, however, in not crediting the defendant with amounts paid directly to the plaintiff's subcontractors. We modify the judgment to credit such amounts. In all other respects, we affirm.

FACTS

Howard California Properties Camarillo 5, LLC (hereafter "Howard") owns a commercial building in Camarillo. PQC Consulting, Inc., (hereafter "PQC") leased a unit in the building from Howard for five years beginning October 1, 2009. It was PQC's intention to build a biopharmaceutical research laboratory in the

leased unit. PQC contracted with Lawrence R. Anderson Construction, Inc., (hereafter "Anderson") to construct the laboratory. The total price of the contract, including change orders, was \$211,698.

Anderson began construction on December 7, 2009. By the first week of March 2010, however, it was clear that PQC was having financial problems. Howard stopped work. PQC paid only \$15,000 on the contract.

Anderson timely recorded a mechanic's lien in the amount of \$196,698; that is, the full amount of the contract price less the \$15,000 payment by PQC. Howard had not recorded a timely notice of nonresponsibility. (Civ. Code, § 3094.)¹

Anderson sued PQC and its principals for breach of contract and Howard to foreclose the mechanic's lien. PQC and its principals filed for bankruptcy and were dismissed from the action.

During the pendency of the action, Howard purchased an assignment of rights from three subcontractors to whom Anderson owed money for work on the project. Howard paid a total of \$15,826 to the subcontractors. The contract between Anderson and the subcontractors contained a clause prohibiting assignment. The trial court allowed Howard to allege the \$15,826 he paid to the subcontractors as a set off. Howard also alleged that Anderson had forfeited his lien for overstating the amount. (§ 3261.)

The trial court considered expert opinion and determined that at the time Anderson recorded his mechanic's lien, 50 percent of the work to be performed on the contract had been completed. It found unpersuasive estimates of the reasonable value of the work based on comparable construction projects because

¹ All statutory references are to the Civil Code. (Civil Code sections 3094, 3261 and 3123 were repealed by Stats. 2010, ch. 697 (SB 189) section 16, operative July 1, 2012, and are now Civil Code sections 8444, 8422 and 8430, respectively.)

"This was a unique project intended to satisfy [PQC's] specific technical requirements."

The trial court concluded that the best measure of the reasonable value of the services and materials rendered is the contract price multiplied by 50 percent of the work completed, minus \$2,880 because "the epoxy coating applied to the floor was defective." It "determine[d] that the reasonable value of the improvement is one-half of \$208,818 (\$211,698 - \$2,880), or \$104,409 . . . , less the partial payment paid by PQC of \$15,000, for a total of \$89,409."

The court denied Howard credit for what he paid to Anderson's subcontractors. The court pointed out that the subcontractors were contractually obligated to Anderson to abstain from assigning; that Anderson objected and gave notice the assignments were void; that as a putative assignee Howard stood in the shoes of the subcontractors, thus the assignments were ineffective as between Anderson and Howard; and the assignments did not purport to extinguish the debt, thus Anderson remains liable to the subcontractors.

The court also rejected Howard's defense that Anderson should forfeit his lien for overstating the amount. (§ 3261.) The court found that the evidence was not clear and convincing and that the overstatement was done with the intent to defraud.

DISCUSSION

I

Howard contends the trial court erred in failing to make a finding of the reasonable value of the labor, services and materials provided to the job independent of the contract price.

Former section 3123, subdivision (a) provides in part: "The lien[] . . . shall be for the reasonable value of the labor, services, equipment, or materials furnished or for the price agreed upon by the claimant and the person with whom he or she contracted, whichever is less." Subdivision (b) of that section provides in part: "[I]n the event of rescission, abandonment, or breach of the contract, the

amount of the lien may not exceed the reasonable value of the labor, services, equipment, and materials furnished by the claimant."

Here PQC breached the contract. The trial court determined that the reasonable value of the labor, services, equipment and materials furnished by Anderson is best measured by the percentage of the contract completed. Nothing in section former 3123, subdivision (a) requires the court to assess the reasonable value independent of the contract.

Howard's reliance on former section 3123, subdivision (a) is misplaced. First, subdivision (b) applies here where the contract has been breached. Second, the limitation in subdivision (a), reasonable value or agreed price, "whichever is less," means nothing more than where the contract is fully performed, the maximum amount of the lien is the contract price. (See *University Casework Systems, Inc. v. Superior Court* (1974) 41 Cal.App.3d 263, 266.)

Former section 3123 does not prescribe any particular method for determining reasonable value. Contrary to Howard's suggestion, it does not require the trial court to base its determination on the cost of labor and materials furnished or the amount by which the improvements increase the value of the land. The section requires only that the trial court employ some reasonable method for determining the reasonable value of the labor, services, equipment and materials furnished to the job. The percentage of the contract completed is one such reasonable method.

II

Howard contends the trial court erred in not crediting it with \$15,826 it paid to Anderson's subcontractors.

Howard made payments totaling \$15,826 to three of Anderson's subcontractors for work performed on the PQC project. In return, the three subcontractors made absolute assignments of all their rights in the subcontracts. In denying Howard credit for the \$15,826 paid to the subcontractors, the trial court relied on a provision in the subcontracts prohibiting assignment.

The subcontracts provided, "Subcontractor shall not assign the whole or any part of Subcontract Work or this Agreement without prior written approval of Contractor." But such a general provision prohibiting assignment of a contract will not be construed as prohibiting an assignment of money due under the contract. (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 716, p. 801.) Here Howard was simply claiming credit for the assignments of money due under the subcontracts. The general prohibition against assignment does not control, and the assignments were valid.

The trial court's concern that Anderson remains liable to the subcontractors is unfounded. An assignor may not maintain an action on a claim after making an absolute assignment of it to another. (*Botsford v. Haskins & Sells* (1978) 81 Cal.App.3d 780, 784.) The assignee acquires the right to demand performance, and the assignor's right is extinguished. (*Ibid.*) Subcontractors will have no claim against Anderson. Failing to credit Howard denied it the benefit of the assignments and provided a windfall to Anderson.

The judgment is modified by reducing the amount of the lien by \$15,826, which results in a judgment of \$73,583. In all other respects, the judgment is affirmed. Each party shall bear its own costs.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Mark S. Borrell, Judge

Superior Court County of Ventura

Halling Sokol + Meza LLP and Chris W. Halling for Defendant and
Appellant.

Myers, Widders, Gibson, Jones & Schneider and Jill L. Friedman for
Plaintiff and Respondent.